



THE CITY OF SAN DIEGO

REPORT TO THE HEARING OFFICER

HEARING DATE: December 22, 2004 REPORT NO. HO 04-207

ATTENTION: Hearing Officer

SUBJECT: STARSHINE MARKET
PTS PROJECT NUMBER: 46806

LOCATION: 4475 Clairemont Mesa Boulevard

APPLICANT: Zakar & Co., Inc

SUMMARY

Requested Action - Should the Hearing Officer approve Conditional Use Permit No. 132623 to upgrade an existing off-sale beer and wine license to an off-sale general alcohol license for an existing market on a 2.03-acre site at 4475 Clairemont Mesa Boulevard in the CN-1-2 Zone within the Clairemont Mesa Community Plan area?

Staff Recommendation -

1. Approve Conditional Use Permit No. 132623

Community Planning Group Recommendation – On October 19, 2004, the Clairemont Mesa Planning Committee voted 11-3-0 to oppose the proposed project.

Environmental Review – The project has been determined to be exempt from the California Environmental Quality Act (CEQA) per CEQA Section 15301, Existing Facilities.

BACKGROUND

The Starshine Market project site is a 2.03-acre parcel located at 4475 Clairemont Mesa Boulevard on the southwest corner of Clairemont Mesa Boulevard and Genesee Avenue (Attachment 2). The market is located at the southeast corner of a strip mall development, constructed in 1970 as a 7-11 Convenience Store. The Clairemont Mesa Community Plan designates the site for Neighborhood Commercial land use (Attachment 1). The property is zoned CN-1-2 and includes the approximately 2,588 square-foot market/convenience store

featuring food and beverage items. The property is surrounded by a variety of commercial and residential land uses, including a park and elementary school approximately 200 feet to the south.

The applicant, Zakar & Co. Inc, is requesting the Conditional Use Permit to sell general alcoholic beverages as an upgrade to their existing Type 20 beer and wine sales license. The upgraded license is permitted as a limited use in the zone, however the limited use regulations can not be met due to the proximity of the residential and school/park uses to the south, and the number of outlets in the Census Tract.

DISCUSSION

Project Description:

The Starshine Market project is requesting a Conditional Use Permit for the off-sale of alcoholic beverages. Alcoholic beverage outlets are permitted by right as a Limited Use, pursuant to Section 141.0502(b) of the Land Development Code (LDC). However, alcoholic beverage outlets that do not comply with the regulations of this section may be permitted with a Conditional Use Permit pursuant to LDC Section 141.0502(c).

The Limited Use Regulations Section 141.0502(b)(1) do not permit alcoholic beverage outlets by right in the following locations:

1. Within a Federal Census tract, or within 600 feet of a Census Tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent.

The project is located within Federal Census Tract No.85.04 where the general crime rate is 75.1% of the citywide average general crime rate. Therefore, by definition, the project site is **not** considered to be within a high crime area.

2. Within a Census tract, or within 600 feet of a Census Tract, where the ratio of alcoholic beverage outlets exceeds the standards established by the California Businesses and Professional Code (Section 23958.4).

The project is located within Federal Census Tract No. 85.04 which permits a total of seven off-sale alcoholic beverage outlets. There are currently nine existing off-sale outlet within the Census Tract, including this site which currently has a beer and wine only license, therefore; the addition of the proposed outlet would still be above the allowable limit and a Conditional Use Permit is required for the off-sale of alcoholic beverages.

3. Within a Redevelopment Area.

The project is not located within a Redevelopment area.

4. Within 600 feet of a public or private accredited school, public park, playground or

recreational area, church, hospital or a San Diego County Welfare District Office.

The proposed project is within 600 feet of the Field Elementary School and the North Clairemont Community Park therefore, a Conditional Use Permit is required for the off-sale of alcoholic beverages.

5. Within 100 feet of residentially zoned property.

The proposed project is within 100 feet of residentially zoned property therefore, a Conditional Use Permit is required for the off-sale of alcoholic beverages.

In summary, the proposed off-sale alcoholic beverage outlet requires a Conditional Use Permit due to the proximity of the Elementary School and Park, residentially zoned property, and the concentration of alcohol outlets for the Federal Census Tract.

Community Plan Analysis:

The Clairemont Mesa Community Plan does not address the sale of alcoholic beverages. Therefore, the proposed request would not adversely impact the land use goals and recommendations in the Plan.

On October 19, 2004, the Clairemont Mesa Planning Committee voted 11-3-0 to oppose the proposed project. Comments from the community group included concerns about bottle size, close proximity to the park, and hours of operation.

The San Diego Police Department has reviewed the application and supports the upgrade to the existing alcohol license as proposed due to the crime statistics for the area at 75% of the city average (Attachment 10). Additionally, the hours of operation for the alcoholic beverage outlet will remain limited to 6:00 AM to 10:00 PM.

Development Services supports the project because the applicant has complied with all of the applicable regulations contained within the Land Development Code for the proposed use. Staff has considered the project and believes that the sale of general alcohol would not have a significant effect on the community. The Conditional Use Permit includes conditions designed to minimize loitering and provide illumination on the premises.

Conclusion:

Development Services staff has determined that the proposed sale of alcohol as a part of the convenience store is consistent with the regulations of the Land Development Code and permitted with an approved Conditional Use Permit. The San Diego Police Department has reviewed and supports the project and provided specific permit conditions designed to limit the sale of alcohol on the site. The Police Department has also determined that a finding of public convenience or necessity consistent with the Alcohol Beverage Control (ABC) Guidelines can be made based on the citywide average general crime rate within the area. Development Services has included restrictions on accessory uses such as video games and provided limitations on

advertising. The San Diego Police Department and the Alcohol Beverage Control have no outstanding issues and the project was categorically exempt from the California Environmental Quality Act. While city staff understands the concerns forwarded by the community group regarding alcohol sales, the deterrent and enforcement of that activity is a responsibility of the Police Department and not a land use issue addressed within the Land Development Code.

ALTERNATIVES:

1. **Approve** Conditional Use Permit No. 132623, **with modifications.**
2. **Deny** Conditional Use Permit No. 132623, **if the findings required to approve the project cannot be affirmed.**

Respectfully submitted,

Jeannette Temple, Development Project Manager

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Floor Plan (To Hearing Officer Only)
6. Draft Permit with Conditions
7. Draft Resolution with Findings
8. Community Planning Group Recommendation
9. Ownership Disclosure Statement
10. Census Tract Map and Existing Alcoholic Beverage Outlets information from the SDPD